U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 0 9 2015 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician. At the time he filed the petition, the petitioner was a fellow in transplant nephrology at The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner, through counsel, submits a brief listing the petitioner's publications and presentations and asserting that he has submitted sufficient evidence to establish eligibility for the benefit sought. The brief does not offer new facts or make any specific allegation of error in the director's decision.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability.-
>
> > (A) In General. - Visas shall be made available ... to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer-
> >
> > > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.
> > >
> > > (ii) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if –
> > > >
> > > > (I) (aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a

> shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and
>
> (bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

The director determined that the petitioner qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The petitioner has established that his work as a physician is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner's work will be national in scope and whether he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish his past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require

future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT* at 220. At issue is whether this petitioner's contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

II. ANALYSIS

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on August 21, 2013. The petitioner stated in Part 6 of the Form I-140 that he intends to work as a "Physician," and that in this position he will "diagnose and treat patients suffering from various disorders." The petitioner submitted evidence that, at the time of filing, he was participating in a one-year fellowship in transplant nephrology at [redacted] from July 1, 2013 to June 30, 2014.

In support of the petition, the petitioner submitted several letters of recommendation. In a June 24, 2013 letter, Dr. [redacted] Transplant [redacted] New York, stated in part:

> I offer my professional opinion that [the petitioner] is an outstanding physician-scientist in the field whose research findings have been published in prominent medical journals in the field, including [redacted] evincing the significant impact his works have had in the medical research community.

The petitioner submitted evidence of his publications in the named journals, as well as evidence regarding the rankings and impact factors of some of the journals. In addition, the petitioner submitted Google Scholar citation records indicating that his works were cited a total of three times. Although Dr. [redacted] asserted that the petitioner's publications are evidence of the "significant impact" of his work, she did not provide specific examples of how the petitioner's research findings have impacted the medical research community. Further, the number of citations of the petitioner's articles does not demonstrate that his work has influenced the field as a whole. A journal's ranking and impact factor can provide an approximation of the prestige of the journal, but they do not demonstrate the impact of every article published in that journal. The petitioner must establish that the findings in his articles have affected the field as a whole.

Dr. also stated that the petitioner "was invited to present his findings at prestigious national conferences," and that "his research presentations received numerous accolades including 2nd Place for his Poster Presentation at the and 3rd Place for his Poster Presentation at the " The petitioner submitted evidence of his research presentations, and evidence that he won "Third Prize" in the on April and "3rd Place in the at the New York Chapter of the on April

With regard to the petitioner's presentations at medical conferences, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. These meetings and conferences are promoted and sponsored by professional associations, educational institutions, employers, and government agencies. Although presentation of the petitioner's work demonstrates that his research findings were shared with others and may be acknowledged as original based on their selection to be presented, there is no documentary evidence showing, for instance, that his presented work has resulted in medical advances that have been implemented at a number of hospitals, that his work has been frequently cited by independent researchers, or that his findings have otherwise influenced the field as a whole.

Regarding the petitioner's awards for his research presentations, recognition for achievements is an element that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii). Exceptional ability, in turn, is not a self-evident ground for the national interest waiver. *See* section 203(b)(2)(A) of the Act. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise. Particularly significant awards may serve as evidence of the petitioner's impact and influence on his field, but the petitioner has demonstrated that the two awards he received (one of which was specifically limited to physicians in training) are indicative of his influence on the field as a whole.

In her letter, Dr. also discussed the petitioner's expertise in various clinical procedures. She stated in part:

> Clinically, [the petitioner] is unique among his peers in the subspecialty area of nephrology for his expertise in plasmapheresis and apheresis, a cutting edge, treatment modality used for treating kidney rejection in patients following kidney transplantation and for harvesting stem cells prior to bone marrow transplantation to treat cancer of the blood. There are only a handful of medical centers in the country that perform this procedure because, associated with this procedure are life-threatening complications including arrhythmia, sudden decrease in blood pressure, and sudden death. Thus, not all nephrologists possess the expertise to perform

> plasmapheresis therapy, making [the petitioner] one of the few nephrologists in the nation with sufficient experience to perform plasmapheresis.

Dr. further described the petitioner's skills and experience in diagnosing and treating a variety of conditions in his then-current position at where he served as a nephrology fellow from 2011 to 2013. However, special or unusual knowledge or training does not inherently meet the national interest threshold. *NYSDOT* at 221. Any claim that the petitioner possesses useful skills, or a "unique background" relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process.

Finally, Dr. discussed the petitioner's role in teaching medical students, residents, and medical interns while serving as a nephrology fellow at

> As an educator at this prominent medical school, [the petitioner] actively trains the next generation of healthcare providers in the subspecialty of nephrology, thereby directly impacting the health concerns and high quality of care of the men, women, and children patients under their care, not only in the respective communities but also throughout the nation as each physician that he has instructed will move throughout the country establishing their medical practices, utilizing the lessons learned from [the petitioner], beneficially affecting their patients.

Dr. did not indicate that the petitioner personally developed any widely used medical procedures, nor did the petitioner submit evidence to that effect. Teaching existing procedures while employed at a teaching hospital does not distinguish the petitioner from other physicians similarly engaged.

The petitioner also submitted a June 22, 2013 letter from Dr. attending physician at where the petitioner completed a residency in internal medicine from 2008 to 2011. Dr. stated that in her opinion, based on her experience working with "some of the leading nephrology and hypertension specialists in the country," the petitioner "ranks among the top 10% of nephrologist-scientists today." Dr. did not further explain how she estimated the petitioner's standing among nephrologist-scientists, nor did the petitioner submit evidence comparing his work to that of others in the field. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Dr. further stated:

> Additionally, [the petitioner] is a well-regarded physician scientist, having conducted original and important research at the , including " which was the first-of-its-kind to report of , a rare, renal condition

> and its unusual association with vascular endothelial growth factor inhibitors. This case report was extraordinary as it showed reversibility of this renal disease when such chemotherapy drugs are used. As the first-of-its-kind research, [the petitioner's] findings have given new insight into this disease and association with inhibitors. [The petitioner] was invited to present his findings at the
>
> [The petitioner] has gained national recognition for his innovative research findings including " which was one of the first studied that highlighted the association of this very important dermatological disease in dialysis patients after a contrast used in MRI. This research was presented at the , and based on this and other studies, current clinical guidelines absolutely prohibit the use of Gadolinium in dialysis patients.

Regarding Dr. assertions about the originality of the petitioner's research, not every physician scientist who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement. Again, the petitioner must establish that his work has had some degree of influence on the field as a whole. *NYSDOT* at 219, n. 6. Although Dr. asserts that the beneficiary's research "and other studies" influenced the "current clinical guidelines" regarding there is no documentary evidence to support her assertions regarding the impact of the petitioner's work. The petitioner did not submit evidence demonstrating the widespread prohibition of use in dialysis patients or establishing the extent to which the current guidelines on that issue are based on the petitioner's research rather than other studies. As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165. In addition, U.S. Citizenship and Immigration Services need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In a letter dated June 20, 2013, Dr. , Medical Director of stated that the U.S. is "currently experiencing a shortage of nephrologists," and that "[t]herefore, there is a clear need" for the petitioner's expertise as a nephrologist and a transplant nephrologist. The petitioner submitted articles regarding the declining interest in the field of nephrology among physicians in training. The unavailability of qualified U.S. workers, however, is not a consideration in national interest waiver determinations because the alien employment certification process is already in place to address such shortages. *NYSDOT* at 218. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *Id.* at 221. Section 203(b)(2)(B)(ii) of the Act describes an alternative waiver for certain physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. To qualify for that waiver, it is not sufficient for the petitioner to submit only evidence regarding a shortage of physicians in his field of practice. Rather, the waiver is limited to

certain physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12. The petitioner has not addressed or attempted to meet any of these regulatory requirements.

In a July 17, 2013 letter, Dr. Assistant Professor of Medicine at stated in part:

> In the U.S. today, many patients are diagnosed with acute renal failure, which is the sudden and abrupt deterioration in kidney function. Acute renal failure has a very high mortality rate of up to 80% and is a costly condition. The estimated cost for a patient requiring dialysis secondary to acute renal failure averages between $60,000 and $250,000 dollars each year. If caught early, acute renal failure is treatable. [The petitioner's] expertise in the diagnosis and management of this disorder will be of great benefit.

The petitioner did not submit evidence to show that his work has resulted in nationally significant savings in healthcare costs. Further, the assertion that other doctors would make poorer or later diagnoses that would result in greater costs, amounts to unsupported speculation. *See Matter of Soffici* at 165. In addition, USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 15.

The remaining letters submitted in support of the petition, written by additional former colleagues of the petitioner at included statements and assertions similar to those previously discussed. Accordingly, they will not be specifically and individually discussed in this decision.

In addition to the issues addressed above, many of the support letters included statements regarding the importance of the field of nephrology. However, general arguments or information regarding the importance of a given field of endeavor, or the urgency of advancing medical knowledge in a particular field, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest waiver test.

On November 13, 2013, the director issued a Request for Evidence (RFE), instructing the petitioner to submit additional evidence to establish that the proposed benefit of his work will be national in scope and that the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

In response to the RFE, the petitioner submitted evidence that, since the filing of the petition, the total citations of his published work increased from three to six. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Accordingly, these additional citations of the petitioner's research do not establish the influence of his work at the time of filing the petition.

The petitioner also submitted a December 11, 2013 letter from Dr. , Vice Chair of Professor and Chief, . Dr. stated that she has worked with the petitioner "since he came on as our transplant fellow in July of 2013." She described the petitioner's training, his expertise in clinical procedures, and his role as clinical instructor as part of his fellowship. She did not assert that the petitioner has had an influence on the field as a whole. She stated the following regarding the petitioner's medical research:

> In terms of research [the petitioner] has several projects; he was participating in a single center non randomized prospective trial to evaluate the efficacy of pneumococcal vaccine in patients receiving in patients with rheumatic diseases when he was at . He is currently working with our basic scientist here and looking at the effect of soluble on predicting immune activity in renal transplant recipients. He has an inquisitive mind and is eager to participate in clinical research. He will have certainly at least two publications at the end of his fellowship year. He has authored one peer reviewed journal article with second author on three others with multiple poster presentations over the last 5 years.

The petitioner submitted evidence that, since filing the petition, he has submitted an additional manuscript for publication. He also stated that "another clinical case report (a first case report of its kind) is ready for submission." As these writings have not yet been published, their influence on the field is not yet known. Further, as stated above, eligibility must be established at the time of filing. *Id.*

In response to the RFE, the petitioner also submitted copies of three email communications regarding potential job prospects following the end of his fellowship. In a December 31, 2013 email, the managing partner of states that the Nevada, is "interested in hiring a Transplant trained nephrologist to join their group and manage their transplant patients in addition to some general nephrology, and to work within the with the transplant team to provide care for patients and ~ " The email did not offer the position to the petitioner, but instead stated that an interview could be arranged if the petitioner was interested in pursuing the position. The other two emails, dated November 12, 2013, and January 17, 2014, are from recruiters inquiring as to the petitioner's interest in "a 100% position with the ," and "a new position I just received in Ohio," respectively.

The director denied the petition on June 4, 2014. The director stated that the petitioner did not establish that the benefits of his proposed work are national in scope. The director also determined that the record lacked evidence showing that the petitioner's work has influenced the field. The director therefore concluded that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a June 12, 2014 letter asserting that "clear evidence was submitted showing that [the petitioner] has made significant contributions to the field, that his work has impacted the national interest, and that he has distinguished herself [sic] from his peers, thereby justifying the waiver of labor certification." The petitioner does not allege any specific error on the part of the director or point to any evidence that the director failed to consider.

With regard to the issue of national scope, clinical practice affects a relatively small, local patient base, and therefore lacks the national scope necessary to satisfy the second prong of the *NYSDOT* national interest waiver test. The benefit from medical research, however, has national scope, as the results from such research are disseminated to other practitioners through conferences and journals. Although the petitioner submitted evidence of medical research conducted during his residency and fellowship, the petitioner's mandatory participation in research during his residency does not mean that the petitioner will continue to engage in research after his training is complete. The submitted emails regarding employment opportunities did not mention research, and therefore they do not demonstrate that the petitioner will perform research as part of his future employment. Further, the petitioner indicated on the petition that he would "diagnose and treat patients," without mention of research. As the petitioner has not established that he will continue conducting medical research, he has not established the national scope of the benefit of his prospective work.

In addition, the petitioner has not established that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The record establishes that the petitioner is a capable physician who has made a favorable impression on his superiors. Nevertheless, the evidence submitted does not establish that the petitioner's work has influenced the field of nephrology as a whole.

III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. While the petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.